



RCE-100  
1600

REQUEST  
For  
**CONTINUED EXAMINATION (RCE)  
TRANSMITTAL**

Address to:

**BOX RCE  
COMMISSIONER FOR PATENTS  
WASHINGTON, DC 20231**

(Revised 10/2001)

Application Number 09/700,687

Filing Date February 14, 2001

First Named Inventor: Laurent Benbadis

Art Unit: 1651

Examiner Name: R. Davis

Attorney Docket No. 33339/206076

TECH CENTER 1600/2900

FEB 11 2003

RECEIVED

#11793  
2/12/03

This is a request for **Continued Examination (RCE)** under 37 C.F.R. § 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application.

**1. Submission required under 37 C.F.R. § 1.114**

- a.  Previously submitted
  - i.  Consider the amendments(s)/reply under 37 C.F.R. § 1.116 previously filed on (Any unentered amendment(s) referred to above will be entered).
  - ii.  Consider the arguments in the Appeal Brief or Reply Brief previously filed on
  - iii.  Other
- b.  Enclosed
  - i.  Amendment/Reply
  - ii.  Affidavits(s)/Declarations(s)
  - iii.  Information Disclosure Statement (IDS); of cites listed on PTO Form 1449
  - iv.  Other: Submission Accompanying RCE Request; Declaration Under 37 C.F.R. 1.132

**2. Miscellaneous**

- a.  Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of \_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required)
- b.  Other

02/07/2003 SFELEKE1 00000019 09700687

01 FC:1801 750.00 00  
02 FC:1252 410.00 00

**3. Fees** The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.

- a. The Director is hereby authorized to charge any fee deficiencies, or credit any overpayments, to Deposit Account No. 16-0605.
- i.  RCE fee required under 37 C.F.R. § 1.17(e)  
(\$750.00 large entity; \$375.00 small entity)

In re: Laurent Benbadis

Appl. No.: 09/700,687

Filed: February 14, 2001

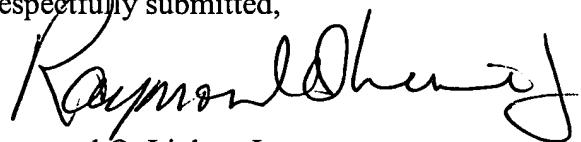
Page 2

ii.  Extension of Time Fee (37 C.F.R. §§ 1.136 and 1.17)  
iii.  Other

b.  Checks in the amount of \$750.00 (RCE Fee) and \$410.00 (Extension Fee) are enclosed

**4. Petition For Extension Of Time** Applicant hereby petitions for two-month extension of time in which to file the Appeal Brief, thus extending the period for response from December 17, 2002 to February 17, 2003. A check in the amount of \$410.00 is enclosed.

Respectfully submitted,



Raymond O. Linker, Jr.  
Registration No. 26,419

**Customer No. 00826**

**ALSTON & BIRD LLP**

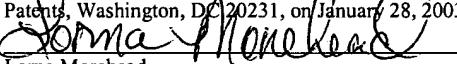
Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

<b>CERTIFICATION OF FACSIMILE TRANSMISSION</b>  I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office at Fax No. _____ on the date shown below.  (Type or print name of person signing certification.)  _____ Signature _____ Date	<b>CERTIFICATE OF MAILING</b>  I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box RCE, Commissioner For Patents, Washington, DC 20231, on January 28, 2003.   Lorna Morehead
--	--

Attorney's Docket No. 33339/206076

FEB 06 2003

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Laurent Benbadis, et al. Confirmation No.: 8151  
Appl. No.: 09/700,687 Group Art Unit: 1651  
Filed: February 14, 2001 Examiner: R. Davis  
For: MUTANT LACTOBACILLUS BULGARICUS  
STRAINS FREE FROM BETA-GALACTOSIDE ACTIVITY

TECH CENTER 1600/2800

FEB 11 2003

RECEIVED

#12  
M.9.3  
2/12/03

Commissioner for Patents  
Washington, DC 20231

January 28, 2003

**SUBMISSION ACCOMPANYING RCE REQUEST**

Sir:

A Notice Of Appeal in this application was filed October 17, 2002. An Appeal Brief has not been filed. Applicant now requests that the Appeal be withdrawn, and that the application be returned to the Examiner for continued examination to consider the materials accompanying this submission.

In particular, submitted herewith is a Declaration under 37 C.F.R. 1.132 by J. Mengaud. This Declaration provides a detailed explanation of experiments that were conducted to determine whether the acidification properties exhibited by the *L. Bulgaricus lacZ* non-sense mutant of the present application are different from the acidification properties exhibited by a *lacZ* deletion mutant derivative of this same strain of *L. bulgaricus*.

As will be seen from the Declaration, these tests confirm that the mutant strain of the present invention is distinctly different from the deletion mutant strain DN-100 542 of the prior art. Specifically, strain I-1968 of the present invention acidifies milk slower than strain DN-100 542. This difference is an important technological property for yogurt production. The slower acidification is an advantageous property in yogurt production, since it can give more time for an associated *S. thermophilus* strain to grow when the *thermophilus* strain is associated with the *L. bulgaricus* strain as a texturing strain.

In re: Laurent Benbassat, et al.

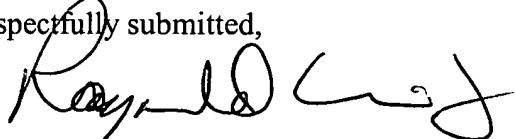
Appl. No.: 09/700,687

Filed: February 14, 2001

Page 2

Favorable consideration by the Examiner is respectfully requested.

Respectfully submitted,



Raymond O. Linker, Jr.

Registration No. 26,419

**Customer No. 00826**

**ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

**CERTIFICATION OF FACSIMILE  
TRANSMISSION**

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office at Fax No. on the date shown below.

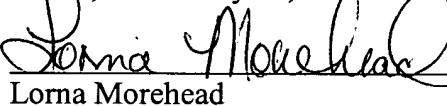
(Type or print name of person signing certification.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:  
Commissioner for Patents, Washington, DC  
20231, on January 28, 2003

  
\_\_\_\_\_  
Lorna Morehead